

# **EXHIBIT "A"**

**Wilkinson, Benjamin M.**

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**From:** Nerko, Charles J.  
**Sent:** Wednesday, May 11, 2022 6:29 PM  
**To:** Byam-Katzman, Jesse L.; 'rjp@pietragallo.com'; Wilkinson, Benjamin M.; O'Brien, Sarah A.  
**Cc:** Wronski, Andy; 'Efrem Grail'; 'Brian C. Bevan'  
**Subject:** RE: Bessemer - Fiserv - Special Masters [IWOV-Active.FID3046284]

Jesse, thank you stating Fiserv's position. We appear to remain at a disagreement, and we will file our portion of the report separately.

**Charles J. Nerko** - Partner  
📍 New York City 📞 (212) 784-5807

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**From:** Byam-Katzman, Jesse L. <JByam-Katzman@foley.com>  
**Sent:** Wednesday, May 11, 2022 6:23 PM  
**To:** Nerko, Charles J. <CNerko@barclaydamon.com>; 'rjp@pietragallo.com' <rjp@pietragallo.com>; Wilkinson, Benjamin M. <BWilkinson@barclaydamon.com>; O'Brien, Sarah A. <sobrien@barclaydamon.com>  
**Cc:** Wronski, Andy <AWronski@foley.com>; 'Efrem Grail' <egrail@graillaw.com>; 'Brian C. Bevan' <bbevan@graillaw.com>  
**Subject:** RE: Bessemer - Fiserv - Special Masters [IWOV-Active.FID3046284]

Charles:

We do not interpret the order to mandate that the parties' confer regarding the pending discovery motions. At any rate, we have offered to meet and confer regarding the pending disputes on several occasions. We do not agree to the revisions you provided to the report and will not sign that version.

Jesse

**Jesse L. Byam-Katzman**

Foley & Lardner LLP  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5306  
P 414.319.7057

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**From:** Nerko, Charles J. <CNerko@barclaydamon.com>  
**Sent:** Wednesday, May 11, 2022 5:13 PM  
**To:** Byam-Katzman, Jesse L. <JByam-Katzman@foley.com>; 'rjp@pietragallo.com' <rjp@pietragallo.com>; Wilkinson, Benjamin M. <BWilkinson@barclaydamon.com>; O'Brien, Sarah A. <sobrien@barclaydamon.com>  
**Cc:** Wronski, Andy <AWronski@foley.com>; 'Efrem Grail' <egrail@graillaw.com>; 'Brian C. Bevan' <bbevan@graillaw.com>  
**Subject:** RE: Bessemer - Fiserv - Special Masters [IWOV-Active.FID3046284]

**\*\* EXTERNAL EMAIL MESSAGE \*\***

Jesse,

Could you please advise on the status?

As it is now after the close of business, if we do not receive a mutually acceptable joint status report shortly, we will unilaterally file Bessemer's portion, and Fiserv may respond separately as it deems appropriate. Thank you.

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**From:** Nerko, Charles J.

**Sent:** Wednesday, May 11, 2022 5:08 PM

**To:** Byam-Katzman, Jesse L. <[JByam-Katzman@foley.com](mailto:JByam-Katzman@foley.com)>; 'rjp@pietragallo.com' <[rjp@pietragallo.com](mailto:rjp@pietragallo.com)>; Wilkinson, Benjamin M. <[BWilkinson@barclaydamon.com](mailto:BWilkinson@barclaydamon.com)>; O'Brien, Sarah A. <[sobrien@barclaydamon.com](mailto:sobrien@barclaydamon.com)>

**Cc:** Wronski, Andy <[AWronski@foley.com](mailto:AWronski@foley.com)>; 'Efrem Grail' <[egrail@graillaw.com](mailto:egrail@graillaw.com)>; 'Brian C. Bevan' <[bbevan@graillaw.com](mailto:bbevan@graillaw.com)>

**Subject:** RE: Bessemer - Fiserv - Special Masters [IWOV-Active.FID3046284]

Jesse,

It's misleading to suggest that no resolution was reached by the parties when the order required a meet and confer. Fiserv rebuffed our and the NCUA's efforts to meet and confer. That is something that the Court ought to be made aware. We will not omit this information from the joint report, and Fiserv may set forth its position in its portion of the joint submission.

The 12 C.F.R 792.40 notice was triggered by the requirements of that rule. The NCUA can share more information on that.

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**From:** Byam-Katzman, Jesse L. <[JByam-Katzman@foley.com](mailto:JByam-Katzman@foley.com)>

**Sent:** Wednesday, May 11, 2022 4:11 PM

**To:** Nerko, Charles J. <[CNerko@barclaydamon.com](mailto:CNerko@barclaydamon.com)>; 'rjp@pietragallo.com' <[rjp@pietragallo.com](mailto:rjp@pietragallo.com)>; Wilkinson, Benjamin M. <[BWilkinson@barclaydamon.com](mailto:BWilkinson@barclaydamon.com)>; O'Brien, Sarah A. <[sobrien@barclaydamon.com](mailto:sobrien@barclaydamon.com)>

**Cc:** Wronski, Andy <[AWronski@foley.com](mailto:AWronski@foley.com)>; 'Efrem Grail' <[egrail@graillaw.com](mailto:egrail@graillaw.com)>; 'Brian C. Bevan' <[bbevan@graillaw.com](mailto:bbevan@graillaw.com)>

**Subject:** RE: Bessemer - Fiserv - Special Masters [IWOV-Active.FID3046284]

Charles:

We have made clear to you that we will be responding to the NCUA separately, and remain available to discuss the pending discovery motions if you have any solutions to offer. Defendants have not asked for a concession, and have not requested waiver of the NCUA's privilege.

Bessemer's position in the draft report misstates that Defendants' counsel have declined to meet and confer. The draft also omits that Andy wrote to you on May 2, explaining he was in arbitration that week and would respond later that week or the following Monday. Bessemer then chose to file its notice at that time without conferring.

Defendants' additions and revisions to the report are in the attached. We will not agree to a joint report in the form proposed by Bessemer, as it is inconsistent with the Court's directive to identify the parties' special master proposals and inform the Court whether any pending discovery disputes have been resolved. The Court did not ask for the back and forth between the parties on issues not before it, and which are not germane to whether the pending motions need to be referred to a master. If Bessemer wants to provide more details on these events, beyond what is contained in its notice, Bessemer can submit a separate filing.

Jesse

Jesse L. Byam-Katzman

Foley & Lardner LLP  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5306  
P 414.319.7057

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**From:** Nerko, Charles J. <[CNERko@barclaydamon.com](mailto:CNERko@barclaydamon.com)>

**Sent:** Wednesday, May 11, 2022 1:50 PM

**To:** Byam-Katzman, Jesse L. <[JByam-Katzman@foley.com](mailto:JByam-Katzman@foley.com)>; 'rjp@pietragallo.com' <[rjp@pietragallo.com](mailto:rjp@pietragallo.com)>; Wilkinson, Benjamin M. <[BWilkinson@barclaydamon.com](mailto:BWilkinson@barclaydamon.com)>; O'Brien, Sarah A. <[sobrien@barclaydamon.com](mailto:sobrien@barclaydamon.com)>

**Cc:** Wronski, Andy <[AWronski@foley.com](mailto:AWronski@foley.com)>; 'Efrem Grail' <[egrail@graillaw.com](mailto:egrail@graillaw.com)>; 'Brian C. Bevan' <[bbevan@graillaw.com](mailto:bbevan@graillaw.com)>

**Subject:** RE: Bessemer - Fiserv - Special Masters [IWOV-Active.FID3046284]

**\*\* EXTERNAL EMAIL MESSAGE \*\***

Jesse, both I and the NCUA's counsel invited Andy as lead counsel to meet and confer. He did not.

It would have been helpful for us to discuss the NCUA's views. A meet and confer be conditioned on us making an advance concession. We don't have the right to waive the NCUA's privilege.

Could you explain what is mischaracterized or omitted, and what you did not receive a response to?

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**From:** Byam-Katzman, Jesse L. <[JByam-Katzman@foley.com](mailto:JByam-Katzman@foley.com)>

**Sent:** Wednesday, May 11, 2022 2:46 PM

**To:** Nerko, Charles J. <[CNERko@barclaydamon.com](mailto:CNERko@barclaydamon.com)>; 'rjp@pietragallo.com' <[rjp@pietragallo.com](mailto:rjp@pietragallo.com)>; Wilkinson, Benjamin M. <[BWilkinson@barclaydamon.com](mailto:BWilkinson@barclaydamon.com)>; O'Brien, Sarah A. <[sobrien@barclaydamon.com](mailto:sobrien@barclaydamon.com)>

**Cc:** Wronski, Andy <[AWronski@foley.com](mailto:AWronski@foley.com)>; 'Efrem Grail' <[egrail@graillaw.com](mailto:egrail@graillaw.com)>; 'Brian C. Bevan' <[bbevan@graillaw.com](mailto:bbevan@graillaw.com)>

**Subject:** RE: Bessemer - Fiserv - Special Masters [IWOV-Active.FID3046284]

Charles:

We will provide defendants' portion shortly. We are disappointed by the mischaracterizations and omissions in Bessemer's portion of the report concerning meet and confer efforts. I note that we did not receive a response from you with respect to the pending discovery disputes. Again, if Bessemer has a proposal to resolve or narrow any of the outstanding disputes, I am available to discuss. Otherwise, in response to the Court's directive that the parties "inform[] the Court as to whether any of the currently outstanding discovery disputes have been resolved," the report should simply state that the currently outstanding discovery disputes have not been resolved.

Jesse

Jesse L. Byam-Katzman

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P 414.319.7057

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**From:** Nerko, Charles J. <[CNERko@barclaydamon.com](mailto:CNERko@barclaydamon.com)>

**Sent:** Wednesday, May 11, 2022 11:44 AM

**To:** Byam-Katzman, Jesse L. <[JByam-Katzman@foley.com](mailto:JByam-Katzman@foley.com)>; 'rjp@pietragallo.com' <[rjp@pietragallo.com](mailto:rjp@pietragallo.com)>; Wilkinson, Benjamin M. <[BWilkinson@barclaydamon.com](mailto:BWilkinson@barclaydamon.com)>; O'Brien, Sarah A. <[sobrien@barclaydamon.com](mailto:sobrien@barclaydamon.com)>

**Cc:** Wronski, Andy <[AWronski@foley.com](mailto:AWronski@foley.com)>; 'Efrem Grail' <[egrail@grailaw.com](mailto:egrail@grailaw.com)>; 'Brian C. Bevan' <[bbevan@grailaw.com](mailto:bbevan@grailaw.com)>

**Subject:** RE: Bessemer - Fiserv - Special Masters [IWOV-Active.FID3046284]

**\*\* EXTERNAL EMAIL MESSAGE \*\***

Please provide defendants' portion of the attached joint draft status report. Bessemer reserves the right to update its position. Regards.

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**From:** Nerko, Charles J.

**Sent:** Tuesday, May 10, 2022 4:14 PM

**To:** Byam-Katzman, Jesse L. <[JByam-Katzman@foley.com](mailto:JByam-Katzman@foley.com)>; [rjp@pietragallo.com](mailto:rjp@pietragallo.com); Wilkinson, Benjamin M. <[BWilkinson@barclaydamon.com](mailto:BWilkinson@barclaydamon.com)>; O'Brien, Sarah A. <[sobrien@barclaydamon.com](mailto:sobrien@barclaydamon.com)>

**Cc:** Wronski, Andy <[AWronski@foley.com](mailto:AWronski@foley.com)>; Efrem Grail <[egrail@grailaw.com](mailto:egrail@grailaw.com)>; Brian C. Bevan <[bbevan@grailaw.com](mailto:bbevan@grailaw.com)>

**Subject:** RE: Bessemer - Fiserv - Special Masters [IWOV-Active.FID3046284]

Jesse, seems my prior email crossed:

We understand that the mutually agreeable Special Master Carole Katz has declined this engagement.

Bessemer has already declined Mr. White, and Ms. Tuite does not appear on the WDPA's list of special master nor does she appear to have appropriate subject matter expertise.

We request Fiserv let us know if the following from the WDPA's approved list are acceptable: Mark Willard, Susan Ardisson, Daniel Garrie.

We again invite Fiserv's lead counsel to a meet and confer to try to narrow the issues that are in dispute. Thanks.

---

**From:** Byam-Katzman, Jesse L. <[JByam-Katzman@foley.com](mailto:JByam-Katzman@foley.com)>

**Sent:** Tuesday, May 10, 2022 4:12 PM

**To:** Nerko, Charles J. <[CNerko@barclaydamon.com](mailto:CNerko@barclaydamon.com)>; [rjp@pietragallo.com](mailto:rjp@pietragallo.com); Wilkinson, Benjamin M. <[BWilkinson@barclaydamon.com](mailto:BWilkinson@barclaydamon.com)>; O'Brien, Sarah A. <[sobrien@barclaydamon.com](mailto:sobrien@barclaydamon.com)>

**Cc:** Wronski, Andy <[AWronski@foley.com](mailto:AWronski@foley.com)>; Efrem Grail <[egrail@grailaw.com](mailto:egrail@grailaw.com)>; Brian C. Bevan <[bbevan@grailaw.com](mailto:bbevan@grailaw.com)>

**Subject:** RE: Bessemer - Fiserv - Special Masters [IWOV-Active.FID3046284]

Charles:

Efrem received an email from Carole Katz this afternoon, to which Richard was copied, stating that she does not have capacity to serve as special master. Please let us know if Bessemer consents to Mr. David White or Ms. Jaime Tuite.

As stated in Defendants' response to Bessemer's notice, we will be responding the NCUA separately and will evaluate whether additional calls between the parties on this subject would be productive. With respect to the pending discovery disputes, Defendants likewise remain available to discuss reasonable resolution, compromise, and/or narrowing of the disputes. If Bessemer has a proposal to resolve one or more of the pending discovery motions, please let us know and we can schedule a call to discuss. But if Bessemer's position has not changed, we do not believe a call between the parties would be productive at this time.

Thank you,  
Jesse

Jesse L. Byam-Katzman

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---

**From:** Nerko, Charles J. <[CNERko@barclaydamon.com](mailto:CNERko@barclaydamon.com)>

**Sent:** Monday, May 9, 2022 2:40 PM

**To:** Byam-Katzman, Jesse L. <[JByam-Katzman@foley.com](mailto:JByam-Katzman@foley.com)>; [rjp@pietragallo.com](mailto:rjp@pietragallo.com); Wilkinson, Benjamin M. <[BWilkinson@barclaydamon.com](mailto:BWilkinson@barclaydamon.com)>; O'Brien, Sarah A. <[sobrien@barclaydamon.com](mailto:sobrien@barclaydamon.com)>

**Cc:** Wronski, Andy <[AWronski@foley.com](mailto:AWronski@foley.com)>; Efrem Grail <[egrail@grailaw.com](mailto:egrail@grailaw.com)>; Brian C. Bevan <[bbevan@grailaw.com](mailto:bbevan@grailaw.com)>

**Subject:** RE: Bessemer - Fiserv - Special Masters [IWOV-Active.FID3046284]

**\*\* EXTERNAL EMAIL MESSAGE \*\***

Bessemer agrees to the appointment of Ms. Katz as special master.

I would note that my colleague Mitch Katz has been involved in the representation of Bessemer. This is a common last name, and Mitch is not aware of any family relationship with Carole Katz. If this is a concern, please let us know so we may address it now.

We remain available, as we have been throughout this case, to discuss any reasonable compromise with respect to the pending discovery disputes and to work toward narrowing issues in dispute. In particular, we would hope that Fiserv gives serious consideration to the views shared by the government. Please let us know some convenient times to speak regarding these issues. We think it would be helpful to schedule two calls – one with the NCUA and our client representatives regarding issues affecting the government's interests, and one between lead counsel to address remaining discovery disputes. Thanks.

## Charles J. Nerko

Partner

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**From:** Byam-Katzman, Jesse L. <[JByam-Katzman@foley.com](mailto:JByam-Katzman@foley.com)>

**Sent:** Monday, May 9, 2022 10:01 AM

**To:** Nerko, Charles J. <[CNERko@barclaydamon.com](mailto:CNERko@barclaydamon.com)>; [rjp@pietragallo.com](mailto:rjp@pietragallo.com); Wilkinson, Benjamin M. <[BWilkinson@barclaydamon.com](mailto:BWilkinson@barclaydamon.com)>; O'Brien, Sarah A. <[sobrien@barclaydamon.com](mailto:sobrien@barclaydamon.com)>

**Cc:** Wronski, Andy <[AWronski@foley.com](mailto:AWronski@foley.com)>; Efrem Grail <[egrail@grailaw.com](mailto:egrail@grailaw.com)>; Brian C. Bevan <[bbevan@grailaw.com](mailto:bbevan@grailaw.com)>

**Subject:** Bessemer - Fiserv - Special Masters

Charles:

Defendants propose the following special master candidates to handle discovery disputes in this case:

- [David White](#)
- [Jaime Tuite](#)
- [Carole Katz](#)

Please let us know if Bessemer will agree to any of these candidates. We are happy to schedule a call if you would like to discuss.

Thank you,  
Jesse

[Jesse L. Byam-Katzman](#)

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